In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 116 of 2005 (S/B)

State of Uttaranchal, through
Director, Bal Vikas and Empowerment,
Uttaranchal, Dehradun .. Petitioner.

Versus

1- Smt. Anita Saxena, W/o Anil Saxena,
R/o Brizwasi Colony,
Post Office Bari Mukhani
Haldwani District Nainital.

2- Chairman, Uttaranchal Public
Service Tribunal, Dehradun ……. Respondents.

Sri K.P. Upadhyaya, learned S.C. for the petitioner.
Sri S.N. Babulkar, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 31-03-2006

This writ petition has been filed by the State of Uttaranchal, challenging the judgment and order passed by the Public Service Tribunal, dated 13-8-2004 and claiming the writ of certiorari for quashing the same.

2- Brief facts of the case are that the respondent No.1 Smt. Anita Saxena (hereinafter called as respondent) was appointed Mukhya Sevika vide appointment letter dated 25-5- 1995. On the basis of the said appointment, the respondent joined the department and she was sent for training and after completion of the same, she joined on 2-3-1996 at Khatima, District Nainital (now Udham Singh Nagar). The respondent was married in the year 1996. The petitioner has averred in the writ petition that the respondent was in the habit of remaining absent from service and duties without any rhyme and reason on false medical certificate, hence in view of the nature of service being temporary, she was dismissed/removed from the service by the competent authority, vide termination order dated 28-10-1999. This termination order was simplicitor and not stigmatic.

4- After receiving the termination order the respondent filed a claim petition before the Public Service Tribunal on the direction of the Allahabad High Court, as earlier a writ petition was filed against the termination order in which the High Court at Allahabad directed to prefer the claim petition before the Public Service Tribunal instead of a writ petition. The claim petition filed by the respondent was transferred to Public Service Tribunal Uttaranchal after creation of the separate State. The public Service Tribunal Uttaranchal, Dehradun vide its judgment/award dated 13-8-2004 directed the department to fix a dated for medical board for appearance of the respondent and after clearance the respondent must be allowed to join her duties and her period of absence should be settled with reference to leave available to her credit. The Public Service Tribunal with the aforesaid direction quashed the termination order dated 28-10-1999.

5- Feeling aggrieved by the aforesaid impugned judgment/award passed by the Public Service Tribunal, the State of Uttaranchal has preferred this writ petition before this court.

6- The counter affidavit has been filed by the respondent Smt. Anita Saxena stating therein that she was appointed on the post of Mukhya Sevika on the basis of the advertisement issued by the department for making recruitment to the post of Mukhya Sevika. It has also been pleaded that she appeared in the writer test examination and after passing the same, she was called for interview and thereafter she was given the appointment letter on 25-5-1995 requiring her to undergo seven months training. It has also been pleaded that respondent Smt. Anita Saxena worked for four years without any interruption, but while she was posted at Ramnagar, she fell seriously ill and firstly she applied for two days casual leave and then applied for medical leave after getting herself examined from the doctor of the Government Hospital. Therefore, she sent the medical certificate to the authorities concerned praying to grant her medical leave as she was entitled for the medical leave. It has further been pleaded in the counter affidavit that to her utter surprise, she was straightaway

terminated from her services treating her absent from duty, without giving any opportunity.

7- Heard learned counsel for the parties and perused the record.

8- Perusal of the record shows that the Punishing Authority passed the order dafter considering this fact only that the respondent remained absent from her duties. Though the order passed by the Punishing Authority is simplicitor one, but it is punitive. It bears the evil consequences and cannot be said to be simplicitor. As the respondent had served for continuously four years without interruption in the department and she was initially appointed on the post of Mukhya Sevika against the vacant post, therefore, her services would not have been terminated without affording her opportunity before passing the impugned order of termination. The respondent also completed the training for seven months before joining the post of Mukhya Sevika and the second appointment letter issued to the respondent nowhere indicates that whether the probation period was one year or it was two years. Therefore, it is quite clear that after completion of probation period, the respondent has acquired the status of permanent employee and the Public Service Tribunal has thus rightly recorded the finding that there was sufficient leave available to the credit of respondent at the time of her termination and the leave available to her should be used for covering her absence.

9- On a careful consideration of the entire circumstances of the case we do not find any infirmity in the impugned judgment/award passed by the public Service Tribunal. The petition, therefore, lacks merit and is liable to be dismissed.

10- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C.Verma, J.)**

ISB